

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE,

THE DELAWARE ENERGY OFFICE,
THE CONTROLLER GENERAL'S OFFICE, AND
THE OFFICE OF MANAGEMENT AND BUDGET

IN THE MATTER OF INTEGRATED RESOURCE)	
PLANNING FOR THE PROVISION OF STANDARD)	
OFFER SUPPLY SERVICE BY DELMARVA POWER &)	
LIGHT COMPANY UNDER 26 DEL. C. § 1007(c) &)	PSC DOCKET NO. 06-241
(d): REVIEW AND APPROVAL OF THE REQUEST)	PSC DOCKET NO. 07-20
FOR PROPOSALS FOR THE CONSTRUCTION OF)	
NEW GENERATION RESOURCES UNDER 26 DEL. C.)	
§ 1007(d) (Opened JULY 25, 2006))	

RESPONSIVE COMMENTS TO THE INDEPENDENT CONSULTANT'S REPORT

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May 2, 2007

I. BACKGROUND

1. Pursuant to the "Electric Utility Retail Customer Supply Act of 2006" (hereinafter "EURCSA" or the "Act"), on the February 6, 2007, the Public Service Commission of Delaware ("the Commission"), the Office of Management and Budget ("OMB"), the Controller General's Office, and the Delaware Energy Office (collectively, the "State Agencies") issued PSC Order No. 7131 regarding their continuing oversight and evaluation of the Request for Proposals ("RFP") for the construction of potential new generation resources within Delaware in order to serve Delmarva Power & Light Company's ("DP&L" or the "Company") customers taking Standard Offer Service ("SOS"). The Commission and the Delaware Energy Office had previously entered Order No. 7066, dated October 31, 2006, reflecting their decision on the appropriate components of an RFP to solicit bids to provide new capacity and energy sited in Delaware for SOS customers of DP&L as required under EURCSA.¹

2. Under the provisions of EURCSA, the Agencies have been directed to evaluate, no later than February 28, 2007, any proposals received under the RFP procurement process and to approve one or more such proposals *if* they meet the criteria set forth in the Act.² The Commission and the State Agencies have determined that the intent of EURCSA may best be satisfied by delaying a decision on the RFP until

¹ Order No. 7066 was modified in certain respects by Order No. 7081, dated November 21, 2006, and supplemented with Findings and Opinion Supplementing Order No. 7106, entered January 23, 2007.

² 26 Del. C. § 1007 (d) (3).

other critical dependent milestones have been completed, or at least put in place.³

3. The RFP is part of "the initial IRP planning process to immediately attempt to stabilize the long-term outlook for standard offer supply in the DP&L service territory" mandated by 26 Del. C. § 1007(d).

4. The Commission subsequently opened a docket to consider the Integrated Resource Plan ("IRP") submitted by DP&L in PSC Docket No. 07-20, pursuant to 26 Del. C. § 1007(c). This IRP requires DP&L to evaluate all available supply options (including procurement, generation, and transmission, conservation, and load management) over a ten-year planning period. Delmarva must also forecast the appropriate mix of such resources that will be utilized to meet the needs of the SOS customers at lowest cost and without sacrificing adequate reliability. See 26 Del. C. § 1007(c) (1).

5. The Commission sought comments about what tasks section 1007(c) (1) assigns, or permits, the Commission to do in response to the IRP. (PSC Order No. 7122, PSC Docket 07-20.)

6. In PSC Order No. 7131, the Commission directed Staff to work with an appropriate consultant, as needed, to make an initial review of DP&L's IRP and to provide an interim report ("Interim Report") no later than April 4, 2007 to the State Agencies and the public in order to provide a framework within which to consider the results of the RFP evaluation.

³ See PSC Order 7131 at 3 (February 6, 2007).

7. The State Agencies and the Commission conducted six state-wide public comment sessions, three in each of PSC Dockets No. 07-20 (the IRP) and 06-241 (the RFP.) Several dozen members of the public spoke at these sessions or filed written comments prior to or after the sessions to express their views with regard to both matters. Several of the Commissioners along with officials from State Agencies attended each of the six public comments sessions.

8. On May 8, 2007, the Commission and State Agencies will meet to discuss the Interim Report on DP&L's IRP and any conclusions reached regarding the results of the RFP evaluation process. The Commission has afforded parties and participants in PSC Dockets No. 06-241 and 07-20 an opportunity to file comments, by May 2, 2007, regarding Delmarva's proposed IRP, the Interim Report, and the RFP bids.

Pursuant thereto, the Division of the Public Advocate ("the DPA") submits these comments concerning Delmarva's request for proposals ("RFP") and Integrated Resource Plan ("IRP,"). These comments discuss some of the deficiencies that the DPA sees in Delmarva's IRP filing, DPA's concerns over customer exposure in the proposed long-term power purchase agreements ("PPA"), issues relating to Standard Offer Service ("SOS") migration, options of energy efficiency and customer-side renewable energy technology, and a recommendation for a bid award if the State Agencies determine that additional generation capacity is indeed needed in Delaware pursuant to the provisions of EURCSA, as set forth in 26 Del. C. § 1007.

II. DISCUSSION

Delmarva's Integrated Resource Plan (2007 to 2016)

1. Load Forecast and Power Supply Issues

The DPA is concerned about the reliability and accuracy of the forecast made by Delmarva because there is no description of the methodologies or assumptions of the model used. The DPA is also concerned about the lack of discussion in the IRP about the factors impacting load growth in Delaware and how those factors are expected to change over the forecast horizon.

Specifically, there are no assumptions regarding future impacts of customer choice and the expected number of SOS customers.

This is precisely the issue that the DPA raised in its comments filed in PSC Docket 06-241 on February 22, 2007.⁴ Also, and as recent as April 24, 2007, Mr. Phil Cherry, the Department of Natural Resources and Environmental Control's ("DNREC") representative, recognized this issue as problematic.⁵

Mr. Cherry inquired as to the "[level of migration currently for SOS residential customers to the only residential customer supplier]"⁶ in Delaware, Washington Gas and Electric Energy Services ("WGES"). The

⁴ For example, if the Commission were to require Delmarva, as the SOS supplier, to enter into a long-term contract above market rates at anytime, customers would either be restricted from choosing a lower-cost supplier, or forced to pay a surcharge offsetting much of their savings. This result undermines competition by either shielding customers from market savings or capping competitive suppliers' revenues. (See, DPA Comments filed February 22, 2007, PSC Docket 06-241.)

⁵ Comments of Mr. Phil Cherry, Transcript ("Tx") at 1583, PSC Meeting of April 24, 2007. (PSC Docket No. 07-20)

⁶ Id. at 1582.

level of migration was supplied by Delmarva as "2000-3000 customers," which is about one percent of the residential customer base.⁷

The rational conclusion from this low level of migration is that customers have not been swayed by price as much as by price stability. This is very much the scenario envisioned by EURCSA.⁸

However, it is important to note that the WGES residential price is currently 13% higher than the SOS summer supply rate, and 2.5% higher than the SOS winter supply rate.⁹

There is no paradox. Customers are reacting appropriately to the price signals. The State Agencies need to concern themselves with the fact that the existing SOS procurement process¹⁰ is working so well for consumers, that for two consecutive years, it has produced below market supply rates for residential customers.¹¹

This was first presented to the State Agencies in our comments in PSC Docket No. 06-241.¹² Specifically, the DPA asserted that "EURCSA should not make customers worse-off than they are now under the current SOS bidding process. This process has been found to be competitive and in the public interest by this Commission. Thus, the Four State Agencies must do more than merely compare the three

⁷ Id. at 1581.

⁸ This means that SOS customers will be those customers choosing price stability, a steady state, rather than the expected price volatility of a competitive market. A long-term and fixed PPA would give customers the benefit of price stability but not the benefit of price sensitivity.

⁹ This is a kilowatt to kilowatt comparison for non-space heating customers. This translates into a yearly savings of \$163.68 for those customers who stay with the SOS provider. Residential Space Heating customers save even more money by staying with the SOS provider. (WGES two year residential offer)

¹⁰ See Order 6746, PSC Docket 04-391.

¹¹ The gap described in footnote 7 will widen with the new SOS rates effective June 1, 2007, less any SOS procurement costs true-ups.

¹² DPA comments at 8.

respective bids. Indeed, they must consider each bid against the existing SOS process in regard to rate stability and consumer protections. The contract awarded in this proceeding must be manifestly better than the current SOS procurement strategy. In that regard, and consistent with sound public policy, the execution of any of these power purchase agreements must leave most customers better off without leaving any customers worse-off. The current SOS process is producing "below market" supply rates for SOS customers. The bids submitted in response to the RFP are all "above market."¹³

Thus, it is reasonable to expect that customer migration will increase if an "above market" contract is executed, stranding costs and putting consumers at risk to unjust and unreasonable "non-by-passable" charges.¹⁴

The State Agencies can only consider construction of new generation under the provisions of 26 Del. C. § 1007(c) (1), which relates to the IRP. There is no need to do so under the provisions of 26 Del. C. § 1007(d), which relates to the RFP because there is no evidence of a need to "immediately stabilize prices." The bids received in response to the RFP, under 26 Del. § 1007(d), have not

¹³ Conclusion of the Independent Consultant Report, filed February 7, 2007 and comments of Mr. Barry Scheingold. Tx at 1590 (PSC Docket No. 06-241).

¹⁴ "After hearing and a determination that it is in the public interest, the Commission is authorized to restrict retail competition and/or add a nonbypassable charge to protect the customers of the electric distribution company receiving standard offer service. The General Assembly recognizes that electric distribution companies are now required to provide standard offer service to many customers who may not have the opportunity to choose their own electric supplier. Consequently, it is necessary to protect these customers from substantial migration away from standard offer service, whereupon they may be forced to share too great a share of the cost of the fixed assets that are necessary to serve them as required by the Electric Utility Retail Customer Supply Act of 2006." 26 Del. C. § 1010(c).

demonstrated themselves to leave customers better-off than they now are under the existing SOS process.

New generation should be considered in response to adequacy concerns to deliver power to Delaware customers, diversify Delaware's fuel mix, and bring long-term environmental benefits to Delaware. (See, e.g., 26 Del. C § 1007(c) (1) b.)

In view of the foregoing, only one bid can and should be considered, the bid submitted by Blue Water Wind.¹⁵ It is the only renewable energy source that would diversify Delaware's current fuel mix of almost 90% coal and nuclear, and bring long-term environmental benefits to Delaware.

Executing a contract with a wind provider outside of Delaware is not a substitute for the Blue Water Wind Proposal.

Staff Consultant, Mr. Sheingold, correctly stated that we do not have to "necessarily" be concerned with the possible lack of transmission upgrades if we were to execute a generation contract across the region rather than in Delaware.¹⁶

However, if Delaware's overall load growth surpasses available capacity in the zone, or the load is greater than capacity in the zone, (which is the current situation as Delaware imports approximately 50% of its power needs), transmission upgrades will

¹⁵ The State Agencies cannot reasonably consider the lowest scoring, highest cost bid with the most emissions (NRG) and certainly not Conectiv's gas fired combustion turbine ("CT"). CT is not a new technology. It is powered by a fossil fuel, not to mention the ominous irony that unstable natural gas prices, the very fuel source for the Conectiv bid, was the primary impetus for EURCSA. Nor is CT a base load technology fuel source. At best, CT may be classified as a load-following peaking source (Mid-merit).

¹⁶ Comments of Mr. Barry Sheingold. Tx. at 1588, PSC Meeting, April 24, 2007 (PSC Docket No. 06-241).

likely be needed, either to reduce congestion or to accommodate the load growth, regardless of whether or not new generation is constructed within the zone.

The DPA finds fault with the IC's recommendation to sign an agreement with an "on-shore" wind farm existing somewhere else in the region¹⁷ as an alternative to the construction of a Delaware offshore wind farm.

Delaware has tools already that accomplish the results of executing a contract such as the one described by Mr. Sheingold with regard to an "out of State" renewable. The proper tools for this are the Renewable Portfolio Standard Act ("RPS"), the *Regional Greenhouse Gas Initiative*, and to a lesser extent the "Green Energy Fund" as amended. (See, 26 Del. C. Subchapter III-A and 29 Del. C. § 8057.)

More importantly, if Delaware were to execute a contract with a wind provider outside of Delaware or its coastal waters, citizens somewhere other than Delaware would get the environmental benefit that Delaware customers have contracted to pay for, while Delawareans get the coal emissions that other customers elsewhere in the region are requiring the dispatch of power from the coal facilities in our backyard.

Furthermore, and within the same context, the DPA believes that if the State Agency determines that it is best for Delaware to execute a PPA with Blue Water Wind that any premiums in price and/or stranded costs created due to migration will be borne by all Delaware electric customers, including municipal and Delaware Electric Co-operative

¹⁷ Id. at 1566.

customers.¹⁸ After all, they will be sharing in the environmentally friendly generation and should, therefore, bear the costs. EURCSA already recognized this by including all distribution customers of Delmarva for the recovery of stranded costs whether or not they are being served by the SOS suppliers. The DPA's recommendation is a natural extension of this philosophy, embodied in Delaware law.

It would be a dubious outcome that SOS customers pay a premium for clean renewable energy to preserve Delaware's environment while their municipal and Co-op neighbors reap the benefits but pay only for the cheaper traditional coal generation which contributed to the emissions in the first place.

Moreover, because they are not currently subject to the IRP,¹⁹ Muni and Co-op customers could drive base load demand enough to off-set any emission gains that are made by executing the PPA with Blue Water Wind.

These customers should be required to utilize the capacity of the Delaware off-shore wind farm. This requirement would also reduce the risk of Delaware SOS customers' exposure with regards to stranded cost, unforced capacity costs, migration, load fluctuations, and the intermittency of wind power. This will help to secure a market for excess capacity as well as minimize customer migration costs to customers.

¹⁸ Also, by including Municipal Customers and DEC customers, the exposure of the 400MW size contract would be reduced. The DPA expressed in our October 2006 comments a concern for the size of the contract, i.e., taking 400MW every hour when the average SOS hourly load during the past year averaged only 279MW with a peak hour of less than 1000MW.

¹⁹ As defined by 26 Del. § 1007(c)(1)

Demand-Side Management

The DPA believes that Delmarva's estimates of the achievable cost-effective potential for energy efficiency in its service area appear very low compared to energy efficiency potentials in other States.

The State Agencies must keep in mind that demand-side response programs (such as smart meters) do not reduce overall load. These programs merely shift the load away from the peak. Conservation and energy efficiency, along with customer-side generation, are programs that have the potential to reduce overall load.

The DPA supports the Sustainable Energy Task Force's initiative to create a Sustainable Energy Utility. Even if only parts of the conservation goals are reached, much, if not all, of the alleged new generation needed for system adequacy would be negated for Delaware.

Nevertheless, if the State Agencies determine that new generation capacity is indeed needed for Delaware's load growth, the DPA recommends the Blue Water Wind proposal. The DPA believes that using renewable energy resources, in conjunction with an SEU, will better diversify our fuel mix, as well as lessen our demand for *fuel-source-price-volatile* fossil fuels such as natural gas, oil, and coal, while meeting the price stability and long-term environmental goals of EURSCA. The SEU will not only conserve energy, but it will eventually put downward pressure on wholesale energy prices.

Retirements and Reliability, and RPM

The DPA agrees with the IC with regard to many of the criticisms of PJM's RPM model as it fails to properly address system adequacy, and its uncertainty with regards to constrained areas. Nonetheless, retail customers may be paying RPM's inflated capacity costs as well as the capacity costs in the long-term PPA considered herein.

The DPA, along with the National Association of State Utility Advocates ("NASUCA") opposed the implementation of PJM's RPM. We believe it will produce higher electricity prices for consumers, increase the incentive for generators to withhold capacity, while these same generators incur windfall profits. We also find PJM's claim that it will address zonal capacity shortfalls, like that which is alleged here in Delaware, not credible. Perhaps one redeeming quality of RPM is that the capacity payments made to generators may delay or defer the retirement of existing plants, which would lessen the impact to Delaware system adequacy with regards to retirements outlined in the IC report, but not materially.

The DPA believes that if the State Agencies determine to award the Blue Water Wind Proposal, that the PSC Staff subsequently petition FERC to relieve Delaware electric customers of their RPM capacity payments, if they are so making those, since they are funding the new capacity additions envisioned by RPM, with direct payments, reducing constraint issues in the zonal region.

The State Agencies must require that a competitive pricing clause be inserted into the PPA with Blue Water Wind, with terms and

conditions to be determined. A competitive pricing clause is the second piece of securing a stable, and marked to market long-term contract.²⁰ (The first was the competitive bidding process completed in December of 2006.). A competitive pricing clause prevents the long-term power purchase agreement from being significantly higher than the prevailing wholesale price of electricity: in the event of a *non-short-term* fall in wholesale electric prices and/or; improvements in generation of transmission technology; system efficiency; and/or adequacy. This measure was not in place when New Jersey electric customers were burdened with high costs to honor long-term non-utility generation contracts in the 1980s ("NUG"s).

In the early 1990s, improvements in technology and other economies greatly increased the disparity between forecasted and actual long-range avoided costs of the NUGs. Delaware SOS customers have learned from this and thus need the protection stated above.

For example, according to the *American Wind Energy Association's* report, The Economics of Wind Energy,²¹ capital costs for a wind farm fell 70% while efficiency increased 120 times over in a twenty year period.

The State Agencies must consider a firm power, load following power purchase agreement to augment the PPA with Blue Water Wind to

²⁰ For example, a competitive pricing clause will allow the buyer, after a period of 1-3 years, to seek competitive bids for the contract. If the new bids fall "within band," an amount agreed to ahead of time by the buyer and seller, then the seller has an option to match or agree to release the seller.

²¹ Published, November 2005, available at www.awea.org

mitigate the intermittency of wind power,²² or require Blue Water Wind to secure the firm power agreement.

The State Agencies, must, prior to securing any of the PPAs, determined the cost of interconnection for the new facility and who will pay those costs. The IC reports have not been clear on this issue.

III. SUMMARY

Based on the foregoing reasons and conclusions outlined above, the DPA recommends the following:

1. That the State Agencies find that the current SOS procurement process continues to be in the public interest, and that it has produced "below market" rates for two years for Delmarva's SOS residential customers. Thus, consideration of the construction of new generation in Delaware should be pursuant to 26 Del. § 1007(c) (1), the IRP, not § 1007(d), the RFP section.²³
2. That the State Agencies should consider, while addressing the need for meeting Delaware's load growth, the economic and environmental benefits of greater energy efficiency and customer-side renewable energy generation envisioned by the **Sustainable Energy Utility**. These measures will help satisfy the long-term

²² Also, if the State Agencies do not take the DPA's recommendation to seek a legislative fix to include Delaware's municipal electric customers and DEC's customers, then the State Agencies consider reducing the PPA to no more than 250MW, (instead of the now proposed 400MW)

²³ The State Agency review must evaluate the cost-benefit associated with executing a long-term "above market" PPA and the environmental benefits of a renewable generation resource in Delaware. Even then, the DPA's position is that the long-term PPA be marked to market with the competitive pricing clause indoctrinated herein.

environmental and price stability goals of EURSCA, and have the potential to curb load growth.

3. That if the State Agencies ultimately determine that new generation is needed for Delaware to maintain system adequacy and diversify our fuel mix, along with satisfying the long-term environmental goals of EURSCA, that the State Agencies do so pursuant to comprehensive Integrated Resource Planning by selecting Blue Water Wind's proposal of an offshore wind farm.²⁴

4. That the State Agencies reject the notion that securing a power purchase agreement with an out of region renewable generation source, such as an on-shore wind farm, is not a substitute for constructing renewable generation in Delaware, under Delmarva's IRP as required by 26 Del. C. § 1007(c)(1).

5. That, if the Blue Water Wind proposal is awarded, the State Agencies direct the PSC Staff to petition FERC for relief of Delaware electric customers' capacity payments to generators, via PJM's RPM model, insert a competitive pricing clause, and open a proceeding to establish a low-income energy rate for eligible households in Delaware.²⁵

6. That the State Agencies seek a legislative fix to require Delaware Municipal Electric Customers and the Delaware Electric Co-op customers to share in the renewable premium payments for a

²⁴ The DPA believes that the purported \$2B "above market" premium for the Blue Water Wind PPA determined by the IC will be greatly lessened, if not eliminated, by adopting the DPA's mark to market proposal, and a recognition that the current market reflects a renewable fuel mix of less than two percent.

²⁵ See DPA comments in PSC Docket No. 06-241, filed February 22, 2007

long-term PPA, as well as net capacity sales, recognizing that as the circumstances stand now, these customers will share in the environmental benefits of EURSCA, but only Delmarva customers will be paying.

7. That the State Agencies reject any recommendation to further delay a decision on the construction of new generation. There is not new insight to be gained by delaying a decision and implementing EURSCA. As it stands now, the procedural schedule for the IRP docket will not be completed until late summer or early fall.

8. The State Agencies reject Delmarva's IRP filing in PSC Docket 07-20 finding it to be inadequate and not satisfying EURSCA.

Respectfully submitted,

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